IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., and JILL MEADOWS. M.D., Petitioners, v. TERRY E. BRANSTAD ex rel. STATE OF IOWA and IOWA BOARD OF MEDICINE, Respondents.	Equity Case No. _____ **MOTION FOR TEMPORARY INJUNCTIVE RELIEF**

COME NOW Petitioners, Planned Parenthood of the Heartland, Inc. ("PPH") and Jill Meadows, M.D., respectfully move this court for a grant of temporary injunctive relief pursuant to Iowa R. Civ. P. 1.1502, on an immediate and emergency basis, and state:

1. Respondent Governor Branstad has announced that he will sign into law Section 1 of Senate File 471 (the "Act"), to be codified at Iowa Code § 146A (2017), on May 5, 2017 at approximately 8:30 a.m., making it immediately effective. See Ex. A-1. Absent immediate relief from this Court, women seeking abortion in the state of Iowa will be severely and unconstitutionally restricted in accessing abortion, due to the enactment of the Act, for which no adequate legal remedy exists.
2. The Act forces all women, regardless of how certain they are in their decision or their medical circumstances, to make an additional, medically unnecessary trip to

a health center. They must do this at least 72 hours before they can obtain an abortion. During this visit, they must have an ultrasound. They must also be given certain state-mandated information regarding the abortion procedure. S.F. 471, § 1 (2017) (to be codified at Iowa Code § 146A.1).

3. These needless and extremely onerous requirements are among the strictest in the nation, and are imposed regardless of the distance a woman must travel to reach her provider, her ability to make an additional trip to the health center, her own medical needs, her judgment, her doctor's judgment, whether she is the victim or sexual assault or intimate partner violence, or her individual life circumstances.[1]
4. Women facing these injuries include those *currently* scheduled for medical appointments to obtain abortions in the coming days—who, because of the immediate effective date of the Act, will be prevented from obtaining the abortions at their scheduled appointment times.
5. Currently, PPH has 44 abortion patients scheduled for Friday, May 5, including 33 medication abortion patients. It also has 11 medication abortion patients scheduled for Tuesday, May 9 and 28 abortion patients scheduled for Wednesday, May 10, including 19 medication abortion patients.
6. Temporary injunctive relief per Iowa R. of Civ. P. 1.1502 is appropriate when necessary "to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation." Kleman v. Charles City Police Dep't, 373 N.W.2d 90, 95 (Iowa 1985). Such relief is appropriate if the movant demonstrates

[1] The Act contains an extremely narrow medical exception to the 72-hour delay requirement, explained in Petitioners' Brief in Support of this Motion for Temporary Injunction, at Factual Background, Section B.

a likelihood of success on the merits, a threat of irreparable injury, and that the balance of harms favors relief. See generally Opat v. Ludeking, 666 N.W.2d 597, 603–04 (Iowa 2003); Max 100 L.C. v. Iowa Realty Co., Inc., 621 N.W.2d 178, 181 (Iowa 2001).

7. As explained more fully in Petitioners' Brief in Support of this Motion for Temporary Injunctive Relief, filed herewith, Petitioners are likely to succeed in their claims that the 72-hour mandatory delay and additional trip requirements violate PPH's patients' rights to due process and to equal protection under the Iowa Constitution.

8. The Iowa Supreme Court has recognized that abortion is a right protected under the Iowa Constitution. Planned Parenthood of Heartland, Inc. v. Iowa Bd. of Med., 865 N.W.2d 252, 263, 269 (Iowa 2015); see also Sanchez v. State, 692 N.W.2d 812, 820 (Iowa 2005). More recently, the Court held that the Iowa Constitution guarantees a fundamental right to procreate, because "the due process clause of our constitution exists to prevent unwarranted governmental interferences with personal decisions in life." McQuistion v. City of Clinton, 872 N.W.2d 817, 833 (Iowa 2015). The decision not to bear a child, no less than the decision to bear a child, merits protection as a deeply "personal choice in matters of family life." Id.

9. This Court therefore should hold that the right to seek an abortion is a fundamental right, entitled to strict scrutiny protection under the state constitution. Id. (holding "if a fundamental right is involved, we apply a strict-scrutiny analysis").

10. The Act plainly fails the demanding strict scrutiny standard. The Act states a purpose of "enact[ing] policies that protect all unborn life." S.F. 471, § 5 (2017). Statements by lawmakers asserted, more specifically, that the purpose of the Act is to persuade women to reconsider their decision. However, the assertion of potential life as compelling cannot be reconciled with each individual's "right to define [her] own concept of existence, of meaning, of the universe, and of the mystery of human life," which even the U.S. Supreme Court has recognized as being "[a]t the heart of liberty." Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 851 (1992). Nor can it be reconciled with her protected "interest in independence in making certain kinds of important [personal] decisions." Whalen v. Roe, 429 U.S. 589, 599–600 (1977); see also Gainesville Woman Care, LLC v. State., 210 So. 3d 1243, 1262 (Fla. 2017).
11. Moreover, the State cannot establish that the Act advances the State's asserted interest because, there is no evidence that forcing women, who are already making considered decisions about abortion and being provided the necessary information to give voluntary and informed consent, to make an additional trip to the health center at least 72 hours before having the procedure will persuade them not to terminate their pregnancies. Aff. of Jill Meadows, M.D. ("Meadows Aff.") ¶ 2; Aff. of Daniel Grossman, M.D. ("Grossman Aff.") ¶ 5; cf. Gainesville Woman Care, 210 So. 3d at 1260.
12. Finally, the Act is not narrowly tailored to achieve the State's asserted interest. The Act indiscriminately applies to all abortion patients even though the vast majority of these patients are firm in their decision by the time they reach the

health center, and the research reflects that ultrasound viewing and mandatory delay have no effect on that certainty. Meadows Aff. ¶ 10; Grossman Aff. ¶¶ 26, 29–31. The Act is among the strictest in the nation, and subjects all these women to delay, increased health risks, costs, stigma, logistical burdens, and severe stress. The Act also applies in situations of fetal anomaly, rape, incest, and domestic violence, as well as (except in very narrowly defined circumstances) when a patient's health is in danger.

13. Even were this court to apply the federal "undue burden" standard instead, the Act still fails. Under this standard, while the State has "'important and legitimate interests in preserving and in protecting the health of the pregnant woman' and 'in protecting the potentiality of human life,'" the State may not impose an undue burden on the woman's right to an abortion. Planned Parenthood of the Heartland, 865 N.W.2d at 263 (citing Roe v. Wade, 410 U.S. 113, 162 (1973)). Moreover, any "means chosen by the State to further the interest in potential life must be calculated to *inform* the woman's free choice, not *hinder* it." Casey, 505 U.S. at 877 (emphases added)).

14. More recently, the U.S. Supreme Court in Whole Woman's Health v. Hellerstedt stressed that the determination of whether or not a law poses an undue burden requires a court to balance, based on actual record evidence, "the burdens a law imposes on abortion access together with the benefits those laws confer." 136 S. Ct. 2292, 2309–10 (2016).

15. Here, the evidence is clear that the burdens imposed on patients by the Act's 72-hour delay and additional trip requirement plainly exceed any benefits. There is

no evidence that women having abortions in Iowa have been unable to fully consider their options and give full and informed consent on the day their abortion procedure is performed. Indeed, Iowa law already requires, consistent with PPH's medical guidelines, that women receive an ultrasound and that women be given "information material to a patient's decision to consent to medical treatment," Estate of Anderson ex rel. Herren v. Iowa Dermatology Clinic, PLC, 819 N.W.2d 408, 416. See Meadows Aff. ¶ 8 (patients are provided all information necessary for them to fully understand the risks and benefits of abortion, and the alternatives to abortion, including carrying the pregnancy to term). Nor is there any evidence that requiring a woman to receive the state-mandated information required by the Act 72 hours before her abortion advances any legitimate state interest. Grossman Aff. ¶ 5; see also above, ¶ 12.

16. Not only does the Act afford no benefits, but "there is no question the [Act] imposes some burdens that would not otherwise exist and did not exist before the [Act] was adopted," which impede access in ways the Iowa Supreme Court has recognized impose an undue burden. Planned Parenthood of the Heartland, 865 N.W.2d at 267.

17. The Act clearly imposes severe burdens on women seeking an abortion. The mandatory delay and additional trip requirement will require all women to make two visits to a health center a minimum of 72 hours apart—one visit to have an ultrasound and receive state-mandated information, and a second visit to obtain the abortion. In reality, of course, the Act will cause delays of greater than 72 hours for some women due to scheduling restraints that exist both on PPH and

women seeking abortions. Meadows Aff. ¶ 27; see also Grossman Aff. ¶ 37 (citing research that mandatory waiting periods cause substantial delay beyond the specific period). These delays will threaten women's health, increase the cost of the procedure, and deny many women access to medication abortion, which in turn will pose additional barriers as more women will have to travel further to access abortion. For some women, the Act will mean they cannot access abortion at all. See generally Meadows Aff. ¶ 28; Grossman Aff. ¶ 46.

18. For all of these reasons, like the telemedicine abortion ban recently struck down by the Iowa Supreme Court in Planned Parenthood of the Heartland, the Act "places an undue burden on a woman's right to terminate her pregnancy," 865 N.W.2d at 269, because there is no evidence that it actually advances any valid state interest and because it unquestionably will make it "more challenging for many women who wish to exercise their constitutional right to terminate a pregnancy in Iowa to do so." Id. at 268.[2]

19. The Act's additional trip and mandatory delay requirements also violate the equal protection rights of women seeking an abortion because they single them out for burdensome restrictions not imposed on patients seeking any other form of health care, including procedures with far greater risks and those for which patients express similar or higher rates of uncertainty before proceeding. See Grossman Aff. ¶ 28 (citing to research showing that abortion patients are equally or more

[2] In addition to all the harms recognized as substantial and undue in Planned Parenthood of the Heartland, the Act further harms women by shaming them, indicating that they are not equipped to understand or make decisions about their own pregnancy and are wrong to seek an abortion.

certain in their decision than patients seeking various other forms of care); cf. Planned Parenthood of the Heartland, 865 N.W.2d at 269 ("An issue of equal protection of the laws is lurking in this case.'" (quoting Planned Parenthood of Wis., Inc. v. Van Hollen, 738 F.3d 786, 790 (7th Cir. 2013)).

20. Because, as set forth in ¶ 8 above, abortion is a fundamental right, the correct standard of review for Petitioners' equal protection claim is strict scrutiny, see, e.g., In re Det. of Williams, 628 N.W.2d 447, 452 (Iowa 2001), which the Act cannot survive, see ¶¶ 10–12.

21. Alternatively, the Act's requirements are subject to intermediate scrutiny because they facially discriminate against women. Varnum, 763 N.W.2d at 880 (sex-based classifications subject to intermediate scrutiny); see Quaker Oats Co. v. Cedar Rapids Human Rights Comm'n, 268 N.W.2d 862, 866–67 (Iowa 1978) ("[A]ny classification which relies on pregnancy as the determinative criterion is a distinction based on sex." (citation and internal quotation marks omitted)), superseded by statute on other grounds, Iowa Code § 216.29 (2011). Not only does the Act single out women by requiring a mandatory delay and additional trip requirement for a medical procedure that is only available to women, but the Act also perpetuates the damaging stereotype that women are not reasonable, competent decision-makers.

22. Under the intermediate scrutiny standard, "the challenged classification [must be] substantially related to the achievement of an important governmental objective." Varnum, 763 N.W.2d at 880. In applying this standard, "the reviewing court must determine whether the proffered justification is exceedingly persuasive," and the

court should "scrutinize the means used to achieve that end" and, in particular, "drill down" on the connection between the classification and asserted adjective. Id. at 897 (internal quotation marks omitted). In addition, the burden of justifying the Act is "demanding and it rests entirely on the *State*." Id. (internal quotation marks omitted and emphasis added).

23. For substantially the same reasons stated above, ¶¶ 11–15, the evidence in this case demonstrates that the Act is not substantially tailored to any important state interest.

24. Petitioners also meet the other factors necessary for obtaining temporary injunctive relief because, as set forth in supra ¶¶ 16–18, the Act will harm patients, and these harms are irreparable. See, e.g., Emma Goldman Clinic v. Holman, 728 N.W.2d 60 (Table), *6 (Iowa Ct. App. 2006) (injunction necessary "to protect the plaintiffs and the clinic's patients and staff from harm"); Planned Parenthood of Mid-Iowa v. Maki, 478 N.W.2d 637, 640 (Iowa 1991) (injunction necessary to protect "Planned Parenthood's right and ability to conduct its business"); Van Hollen, 738 F.3d at 795; Deerfield Med. Ctr. v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. Unit. B Nov. 1981); Roe v. Crawford, 396 F. Supp. 2d 1041, 1044 (W.D. Mo. 2005) (delay in obtaining abortion procedure may cause substantial injury), stay of injunction denied, 546 U.S. 959 (2005).

25. Furthermore, while Petitioners and their patients will be severely harmed by the Act, Respondents will not suffer any harm from Petitioners' patients' continuing to receive care without mandatory delay, as they have for over forty years. Petitioners' existing informed consent process is consistent with current best

medical practices, requirements under Iowa law prior to the Act, and informed consent processes for medical procedures with a comparable degree of risk. Thus, as abortion patients in Iowa already receive comprehensive and appropriate informed consent, the Act's requirements provide no benefit whatsoever and Respondents will not be harmed by being unable to temporarily enforce the Act.

26. Finally, there is no adequate legal remedy. See Ney v. Ney, 891 N.W.2d 446, 452 (Iowa 2017). The Act will cause women subject to its mandates grievous injuries, including being delayed or unable to obtain abortions due to the requirements. Such injuries cannot later be compensated by damages.
27. For the reasons set forth above, and incorporating all the arguments set forth in their concurrently filed Brief in Support of Motion for Temporary Injunctive Relief, Petitioners are entitled to the preliminary relief they seek as necessary to protect the legal rights of their patients, as well as their patients' immediate health and safety while this case proceeds toward final resolution.

WHEREFORE, Petitioners pray this Court temporarily enjoin Respondents from enforcing the Act's mandatory delay and additional trip requirements.

Respectfully submitted,

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*Application for admission *pro hac vice* pending